

REMARKS

Claims 1-6 stand provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 18-32 of co-pending Application No. 10/576,518. This rejection is respectfully traversed as neither of the respective applications have been allowed, whereby the double patenting rejection may become moot in view of possible amendments to the claims, etc.. In this regard, it is respectfully submitted that at least the enclosed amendment obviates any alleged double patenting issue raised by the Examiner.

Claims 1-4 and 6 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Mullenborn et al. '368 ("Mullenborn"). Claim 1 is independent. This rejection is respectfully traversed for the following reasons.

Claim 1 recites in pertinent part, "a second insulating film is formed on part of the first film facing the air gap, and a third insulating film is formed on part of the second film facing the air gap" (emphasis added). According to one aspect of the present invention, the claimed ***combination*** can make it possible to prevent the respective films (e.g., vibrating and fixed films) from sticking to each other by surface tension ***when forming the air gap***, thereby making it possible to better obtain a desired thickness for the air gap with increased precision. In this regard, therefore, a smaller-size and higher-performance device with less characteristic variation can be obtained.

Turning to Mullenborn, in direct contrast to the present invention, the alleged first film 13 has no insulating film formed thereon facing the air gap let alone in the manner arranged in claim 1. Indeed, as admitted by the Examiner, Mullenborn is completely silent as to the processing used to form the alleged air gap 15. Accordingly, Mullenborn is not concerned with the potential sticking of electrodes during formation of the air gap, and therefore has no disclosed need or

desire to provide a configuration which can prevent said sticking. In fact, as described on col. 1, lines 27-31, Mullenborn suggests the desirability for a low-tension diaphragm so as to be completely unaware of the sticking issue. Only Applicants have recognized and considered the sticking issue, and conceived of a novel and non-obvious combination of elements which can make it possible to obviate this drawback of the conventional design.

In sum, it is respectfully submitted that none of the cited prior art, alone or in combination, disclose or suggest the claimed combination as arranged in claim 1. For example, Mullenborn does not disclose or suggest, *inter alia*, "a second insulating film is formed on part of the first film facing the air gap, and a third insulating film is formed on part of the second film facing the air gap." "All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 165 USPQ 494, 496 (CCPA 1970).

Under Federal Circuit guidelines, a dependent claim is nonobvious if the independent claim upon which it depends is allowable because all the limitations of the independent claim are contained in the dependent claims, *Hartness International Inc. v. Simplimatic Engineering Co.*, 819 F.2d at 1100, 1108 (Fed. Cir. 1987). Accordingly, as claim 1 is patentable for the reasons set forth above, it is respectfully submitted that all claims dependent thereon are also patentable. In addition, it is respectfully submitted that the dependent claims are patentable based on their own merits by adding novel and non-obvious features to the combination.

Based on the foregoing, it is respectfully submitted that all pending claims are patentable over the cited prior art. Accordingly, it is respectfully requested that the rejection under 35 U.S.C. § 103 be withdrawn.

CONCLUSION

Having fully responded to all matters raised in the Office Action, Applicants submit that all claims are in condition for allowance, an indication for which is respectfully solicited. If there are any outstanding issues that might be resolved by an interview or an Examiner's amendment, the Examiner is requested to call Applicants' attorney at the telephone number shown below.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

McDERMOTT WILL & EMERY LLP



Ramyar M. Farid
Registration No. 46,692

600 13th Street, N.W.
Washington, DC 20005-3096
Phone: 202.756.8000 RMF:MaM
Facsimile: 202.756.8087
Date: December 29, 2008

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as our correspondence address.**